

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO: 1:14-CV-954-LCB-JLW**

**STUDENTS FOR FAIR ADMISSION,  
INC.,**

**Plaintiff,**

**v.**

**THE UNIVERSITY OF NORTH  
CAROLINA AT CHAPEL HILL, et  
al.,**

**Defendants.**

**MEMORANDUM IN SUPPORT OF MOTION FOR REDACTION OF  
TRANSCRIPT**

Defendants respectfully move for redaction of the trial transcript in this case at pages and lines 560:22-562:16. This portion of the transcript contains personally-identifiable information about former students at UNC-Chapel Hill and should be redacted pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g.

**I. The University Has Obligations Under FERPA to Protect Student Information.**

FERPA applies to educational institutions, such as UNC-Chapel Hill, that receive federal funds, and it protects the privacy of student education records. 20 U.S.C. § 1232g. FERPA terminates funding to educational institutions or agencies that have a policy or practice of releasing students’ education records that contain personally identifiable information without the written consent of the parent or eligible student, unless a statutory

exception applies. 20 U.S.C. § 1232g(b)(1)-(2). FERPA defines education records in broad fashion as “those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution.” 34 C.F.R. § 99.3 (citing 20 U.S.C. § 1232g(a)(4)).

The personally identifiable information in students’ education records is not limited to a student’s name, address, and place of birth. *Id.* Rather, it expressly includes “information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” *Id.* With limited exceptions not applicable here, FERPA prohibits the University from releasing personally identifiable information about a student absent the student’s written consent. 20 U.S.C. § 1232g(b).

## **II. The Portion of the Transcript at Issue Contains Personally-Identifiable Information and Should Be Redacted.**

During the November 2020 trial in this case, Defendants offered the testimony of Mr. Steven Farmer, Vice Provost for Enrollment and Undergraduate Admissions. In his testimony, Mr. Farmer was asked to share examples of students who illustrated the educational benefits of diversity, and he did so. (T pp 560:22-562:16) While Mr. Farmer did not share the names of the former students he described, he discussed their personal circumstances in sufficient detail that the former students could be identified from the testimony. Accordingly, the testimony at issue constitutes personally identifiable information that should not be made public pursuant to FERPA without the students’ express consent. *See* 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.3.

Similar testimony and documents (including applications) relating to students were placed under seal at the trial. However, redaction of a portion of Mr. Farmer's answer will serve the same purpose and constitutes a less drastic alternative to a motion to seal. Accordingly, the University respectfully requests that the Court order the redaction of the transcript at 560:22-562:16.

Counsel has reached out to Plaintiffs and Defendant-Intervenors to obtain their position on this motion, and they have indicated that they do not object to the requested redaction.

This the 11th day of January, 2021.

JOSHUA H. STEIN  
Attorney General

/s/ Patrick Fitzgerald  
Patrick Fitzgerald  
Amy Van Gelder  
Marianne Combs  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 North Wacker Drive  
Chicago, IL 60606-1720  
(312) 407-0700  
E: [patrick.fitzgerald@skadden.com](mailto:patrick.fitzgerald@skadden.com)  
E: [amy.vangelder@skadden.com](mailto:amy.vangelder@skadden.com)  
E: [marianne.combs@skadden.com](mailto:marianne.combs@skadden.com)

/s/ Lara Flath  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, NY 10001  
(212) 735-3000  
E: [lara.flath@skadden.com](mailto:lara.flath@skadden.com)

/s/ Stephanie Brennan  
Stephanie Brennan  
Special Deputy Attorney General  
NC State Bar No. 35955  
E: [sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov)

/s/ Tamika Henderson  
Tamika Henderson  
Special Deputy Attorney General  
NC State Bar No. 42398  
E: [tlhenderson@ncdoj.gov](mailto:tlhenderson@ncdoj.gov)

*Attorneys for the UNC-Defendants*